

ongoing efforts to increase charges on residential end-users^{70/} without passing on savings from access charge reductions by the LECs.

Despite the Notice's focus on changes to the structure of the access charge rules for rate-of-return LECs, AT&T claims that the Commission should "eliminate [the] disparities" between the rate levels of rate-of-return LECs and price cap LECs.^{71/} AT&T thus seeks to impose nationwide rate averaging on the access charge levels of all LECs, even though the vast majority of LECs serve only portions of a single state and no LEC operates nationwide. This version of "one size fits all" regulation is not supported by the record and does not comport with reality. As discussed above, LECs, and rate-of-return LECs in particular, vary dramatically in size, technological development, and business organization, as well as the types of state regulation imposed on them.^{72/} In contrast to AT&T, MCI reasonably supports deferral of further action in this docket.

USTA opposes AT&T's attempt to shift the effect of its legal responsibilities onto rate-of-return LECs. USTA further opposes AT&T's proposed means for doing so. AT&T calls on the Commission to lower the authorized rate of return.^{73/} The Commission should dismiss or deny this proposal as being outside the scope of this proceeding. Indeed, AT&T

^{70/} See *supra* note 10, citing Caroline E. Mayer, *AT&T Sets \$3 Monthly Usage Fee; Low-Volume, New Customers to Pay*, Wash. Post., Aug. 15, 1998, at A1; *AT&T Sets Minimum of \$3 For Monthly Long Distance*, Wall St. J., Aug. 17, 1998, at B5; *AT&T \$3 Monthly Minimum Fuels Debate On LEC Long Distance Entry*, Comm. Daily, Aug. 17, 1998.

^{71/} See comments of AT&T at 6.

^{72/} See, e.g., comments of USTA at 2-4, 9; SPR Affidavit at 3, 5-9; FW&A at 3-4; HSA at 2; Independent Telephone & Telecom Alliance at 3 (noting wide variations in size, systems, and serving areas among members); JSI at 3-7; Minnesota Independent Coalition at 2-4; NECA at 2-4; OPASTCO at 4;

^{73/} See comments of AT&T at 6-7.

neglects to point out that AT&T itself recently opposed such a represcription in a Commission inquiry on that topic.^{74/} AT&T noted that represcription proceedings can be lengthy and would affect access rates of LECs that account for only six percent of total LEC revenues.^{75/} AT&T's reasons in 1996 for not supporting represcription are equally valid now.

In the ROR inquiry, USTA, as well as AT&T and other commenters, explained in detail why represcription was unnecessary.^{76/} If anything, represcription is even less justified today. In particular, the 1996 Act has greatly increased the level of risk faced by rate-of-return LECs, while capital markets are extremely volatile.^{77/} The Commission should deny AT&T's request for represcription.

As described above, AT&T also would peg, or link, rate-of-return LECs' TS charges, including the CCL charge and the TIC, to the nationwide average of the price cap LECs' TS charges.^{78/} Again, AT&T's proposal totally ignores universal service concerns for the

^{74/} See comments of AT&T at 3 (filed Mar. 11, 1996) in *Preliminary Rate of Return Inquiry for Local Exchange Carriers Subject to Rate of Return Regulation for their Earnings on Interstate Access Services*, AAD 96-28, AAD 95-172, Public Notice (rel. Feb. 6, 1996) (the "ROR inquiry").

^{75/} See comments of AT&T in AAD 96-28, *supra*, at 3.

^{76/} See, e.g., comments of USTA in AAD 96-28 (filed Mar. 11, 1996); reply comments of USTA in AAD 96-28 (filed Apr. 15, 1996).

^{77/} See, e.g., Robert O'Harrow Jr., *Dow Plunges 512.61 Points; 6% Drop Erases Year's Gains as Global Economic Woes Continue*, Wash. Post, Sept. 1, 1998, at A1; Gretchen Morgenson, *Bargain-Hunters Drive Stocks Back Up; Keep The Seat Belts Buckled, But It's O.K. To Loosen Them*, N.Y. Times, Sept. 2, at A1.

^{78/} Under AT&T's proposal, rate-of-return LECs would recover any difference between their revenue requirement (revised consistent with the requested represcription) and their access revenues from the universal service fund. Alternatively, AT&T would target reductions in the CCL charge and the TIC targeted to originating rates first, then to terminating rates.

benefit of AT&T. By attempting to reduce per-minute charges precipitously, AT&T would increase pressures on rate-of-return LECs to raise rates charged to end-users. Such an approach raises serious affordability concerns for residential and small business users alike. The Commission should reject AT&T's attempt to have its interests trump those of American consumers.

B. Pricing Flexibility For Rate-Of-Return LECs Is Needed To Realize The Goals Of The 1996 Act

Numerous commenters as well as the SPR affidavit demonstrate that pricing flexibility must be available to permit rate-of-return LECs to respond to the competition that they face even today.^{79/} With pricing flexibility, rate-of-return LECs can reasonably recover the fixed costs of the public switched network while responding to customers' needs.^{80/}

The record demonstrates that pricing flexibility would help rate-of-return LECs overcome difficulties caused by current regulatory rate structures in competing with new entrants that seek to attract high-volume business users.^{81/} As described in USTA's initial comments, pricing flexibility for rate-of-return LECs should be permitted in specific common line and transport rate elements to permit efficient competition, consistent with the 1996 Act. As ALLTEL demonstrates, and contrary to GCI's claims, such flexibility is especially

^{79/} See, e.g., comments of ALLTEL at 2-7; ATU Telecommunications ("ATU") at 2-3; ICORE at 3-4; Lexcom at 28-29; OPASTCO at 8; NRTA/NTCA at 28-29; TDS Telecom at 21-23; Telephone Association of New England at 9, 6 n.16; SPR Affidavit at 10-12.

^{80/} See SPR Affidavit at 10-12.

^{81/} See comments of ATU at 2-4; ALLTEL at 4-7.

important as competition begins to develop, so that entry and investment decisions are made on the basis of economic cost rather than price signals distorted by regulation.^{82/}

Therefore, the Commission should remove its present "all or nothing" rule, which requires rate-of-return LECs in the NECA common line pool that elect to file their own carrier common line tariffs to do so for all of the study areas that they serve.^{83/} LECs should be permitted to file a common line tariff in individual study areas, with zone pricing permitted within such study areas. With this rule change, LECs would be able to address more directly the different market and service conditions that may exist in different parts of their service territories.^{84/}

The Commission also should permit zone pricing of SLCs, PICCs, and the CCL charge within each study area served by a rate-of-return LEC that has exited or does not participate in the pooled NECA common line tariff.^{85/} There should be a reasonable number of geographic pricing zones permitted in each study area, with rates for these elements to be averaged within each zone. Zone pricing for common line elements is especially important to permit rate-of-return LECs to reflect more closely the substantial

^{82/} See comments of ALLTEL at 6, citing Schmalensee and Taylor, *The Need For Carrier Access Pricing Flexibility in Light of Recent Marketplace Developments*, filed as an *ex parte* of USTA in CC Docket No. 96-262; *contra* comments of GCI at 6-7.

^{83/} See comments of ALLTEL at 7-8. The "all or nothing rule" is codified at 47 C.F.R. § 69.3(e)(9); *see also* Notice ¶ 45. The Commission's rules allow rate-of-return LECs to exit NECA's TS pool on a study area basis. *See* 47 C.F.R. § 69.3.

^{84/} For individual study areas in which an otherwise pooling LEC files an individual common line tariff, the LEC would forego recovery of Long Term Support for that study area under the Commission's universal service rules.

^{85/} See comments of USTA at 24-25; TDS Telecom at 23.

differences in common line costs that may occur in different parts of their service territories.^{86/} Without zone pricing, study area-wide rate averaging creates a regulatory pricing umbrella that could deprive customers of the benefits of competition by preventing LECs from competing effectively, even when they are the most efficient providers.^{87/}

For local switching rate elements, NECA commenced rate banding for such elements and the TIC effective January 1, 1998, in its tariff for the TS pool. To retain the flexibility permitted by such banding for rate-of-return LECs that file TS access tariffs for individual study areas, the Commission should permit such LECs to create a reasonable number of geographic pricing zones for local switching elements in each such study area.^{88/}

C. Improved Forms Of Regulation Will Permit Rate-Of-Return LECs To Address Competition Efficiently

The Commission should adopt improved forms of regulating rate-of-return LECs. As USTA has explained, doing so will provide much greater regulatory certainty, which in turn will encourage investment and planning by rate-of-return LECs and others, consistent with the benefits intended by the 1996 Act.^{89/} Accordingly, rate-of-return LECs should be

^{86/} See SPR Affidavit at 3, 5-9.

^{87/} As described in USTA's initial comments, the flexibility proposed in the USTA plan for common line elements would be subject to limitations. The nationally averaged ceilings for SLCs and PICCs in USTA's plan could not be exceeded in any zone. Moreover, revenue foregone from lowering a zone price below the cap or ceiling level could not be recovered from universal service funding.

^{88/} Such zone pricing for local switching elements would be subject to the limitation of being revenue neutral within each study area.

^{89/} See comments of USTA at 26-29; cf., comments of TDS Telecom at 23.

permitted to address competition as it develops.^{90/} USTA urges the Commission to consider permitting a rate-of-return LEC to elect to "open its network" prior to receiving a bona fide request for interconnection, services, or unbundled elements.^{91/} When a LEC notifies the Commission, the affected state commissions, and the public that it has taken these network-opening actions, it would be permitted to engage in tariffing and pricing of interstate telecommunications services on an individual case basis, and also be permitted to file contract-based tariffs for such services.

Alternatively, when a state commission has approved an interconnection agreement under section 251 of the Act involving a rate-of-return LEC in some portion of the LEC's serving territory, the Commission should remove the LEC's interstate access rates from rate-of-return regulation within the area governed by the approved agreement. Because decreased regulation would be appropriate for the interstate services of rate-of-return LECs subject to competition, rate-of-return regulation should no longer be imposed when such competition occurs.^{92/}

^{90/} As USTA stated in its comments, any such improvements must be designed to preserve the viability and integrity of the NECA pools.

^{91/} In this context, such network opening would consist of (i) publishing a list of unbundled network elements ("UNEs") consistent with the Commission's unbundling requirements currently in effect in Part 51 of its rules, with prices for such UNEs that are reasonably related to prices for such elements offered by similarly situated incumbent LECs, and (ii) committing to provide local number portability to any competitive entrant in a timely manner consistent with a state commission's approval of an interconnection agreement between the non-price cap incumbent LEC and that entrant pursuant to section 252 of the Communications Act.

^{92/} The presence of at least one competitor in the LEC's service territory and the existence of an approved interconnection agreement would be an indication that market forces will discipline the LEC's prices for interstate service.

D. Further Changes In The Commission's Rules Should
Not Burden Rate-Of-Return LECs

Numerous commenters support USTA's view that additional changes in the access charge rules should not be made unless they are tailored to the environment in which rate-of-return LECs operate and improve these LECs' ability to respond to competition pursuant to the 1996 Act.

Thus, the Commission should decline to modify section 69.307 of its rules to allocate General Support Facilities ("GSF") costs to the billing and collection category. Many smaller rate-of-return LECs commented on this issue, explaining that they do not use general purpose computers to provide billing and collection services.^{93/} Because these LECs contract for billing services, if additional costs were allocated to the billing and collection category from GSF or any other rate elements, the LECs could not recover these costs because such recovery is already limited by their contracts with suppliers of these services.

The Commission also should not require rate-of-return LECs to recover their marketing expenses through the common line cost recovery mechanisms.^{94/} Although MCI apparently assumes that rate-of-return LECs do not actively market their access services,^{95/}

^{93/} See, e.g., comments of Bear Lake Communications, Inc.; Bristol Bay Telephone Cooperative, Inc.; Cass Telephone Company, Central Utah Telephone, Inc.; Clear Creek Mutual Telephone Company; Dell Telephone Coop.; Direct Communications Inc.; GVNW Inc./Management at 10-14; Hardy Telecommunications, Inc.; ICORE at 4-5; ITCs, Inc. at 6; Lexcom at 21-22; Midvale Telephone Exchange, ID; NECA at 6-7; North-State Telephone Company; Oregon Telephone Corporation; Roosevelt County Rural Telephone Cooperative; Southern Montana Telephone Company; Table Top Telephone Company, Inc.; NRTA/NTCA at 30-31; Western Alliance at 19-20.

^{94/} See, e.g., comments of FW&A at 11; ITCs at 6; Lexcom at 22-23; Western Alliance at 17-18.

^{95/} See comments of MCI at 21-22.

Lexcom demonstrates that many LECs, especially those serving rural areas, market their access services to business customers in competition with other LECs that, for example, wish to attract customers to their service territories.^{96/}

Moreover, some marketing expenses are already allocated to the common line revenue requirement. As discussed above, common line costs of rate-of-return LECs are so high that there is no public policy reason for loading additional marketing costs into the common line category.

Nor should the Commission apply PICCs to special access services offered by rate-of-return LECs. As was the case when the Commission made this proposal for price-cap LECs, all parties that comment on it oppose it.^{97/} To the extent that there are concerns that PICCs on multi-line business lines could lead to migration from switched access to special access services, imposing PICCs on special access will not address this problem. The added burdens on LECs and IXCs alike of administering special access PICCs would yield no benefits.

However, the record strongly supports the Commission's proposal to adopt the streamlined waiver process of section 69.4(g) of the rules for rate-of-return LECs wishing to offer new services.^{98/} Because rate-of-return LECs often model their new service offerings after those already introduced by price cap LECs, a showing of prior approval of identical rate elements should not be limited to petitions granted to other rate-of-return LECs.

^{96/} See comments of Lexcom at 22-23.

^{97/} See, e.g., comments of AT&T at 16-17; MCI at 22-23.

^{98/} See, e.g., comments of OPASTCO at 12.

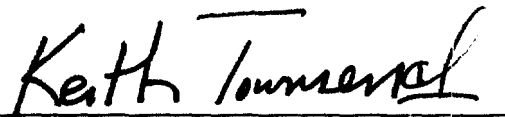
IV. CONCLUSION

The Commission should refrain from permanently changing the access charge structure for rate-of-return LECs until after changes to the high cost support mechanism are complete. However, rate-of-return LECs should be permitted greater pricing flexibility and improved forms of regulation in order to address competition efficiently as it develops. If the Commission decides to proceed before fully considering universal service issues, USTA's access plan for rate-of-return LECs, presented in its initial comments, provides the best way of doing so. The Commission should deny AT&T's attempts to advance its short-term interests by seeking a represcription of the authorized rate of return or a linkage between the traffic sensitive rates of rate-of-return LECs and price cap LECs.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Theresa Caballero, do certify that on September 17, 1998, copies of the accompanying Reply Comments of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.

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